



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF N-C-S-

DATE: SEPT. 20, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a private school, seeks to employ the Beneficiary as "Director, [REDACTED]

[REDACTED] It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based "EB-2" immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on two grounds: (1) that the Petitioner did not establish its continuing ability to pay the proffered wage from the priority date onward, and (2) that the Petitioner did not establish that the Beneficiary had five years of progressive teaching experience at the lower school level to qualify for the job offered under the terms of the labor certification. The Petitioner filed a motion to reopen and a motion to reconsider, which the Director denied on the grounds that they did not meet the requirements of either a motion to reopen or a motion to reconsider. On appeal, the Petitioner asserts that the Director's motion denial was incorrect and contends that the Director did not properly consider evidence regarding the progressive nature of the Beneficiary's teaching experience and the Petitioner ability to pay.

Upon *de novo* review, we will sustain the appeal.

To be eligible for the immigration benefit it seeks, the Petitioner must establish that the Beneficiary met all of the educational, experience, and other requirements of the offered position, as stated on the labor certification, by the priority date of the petition.¹ See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977). In this case the labor certification states at section H.6 and H.6-A that five years of experience in the job offered is required, and at section H.14 that five years of progressive teaching experience at the lower school level is required.² Based on all the evidence in the record, including the employment verification letters from the Beneficiary's prior

¹ The priority date of a petition is the date the underlying labor certification (ETA Form 9089) was filed with the Department of Labor. See 8 C.F.R. § 204.5(d). The priority date in this case is August 29, 2015.

² The record shows that the Beneficiary's highest educational degree is a master of education from the University of [REDACTED] in [REDACTED] Virginia, granted in 2012, which exceeds the labor certification's minimum educational requirement of a bachelor's degree in education.

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employers describing her progressive teaching duties, especially in the years 1996-2007, we find that the Beneficiary meets the experience requirement of the labor certification.

The Petitioner must also establish its ability to pay the Beneficiary the proffered wage, as stated on the labor certification, from the priority date onward. *See* 8 C.F.R. § 204.5(g)(2). In this case the proffered wage is \$60,610 per year and the priority date is August 29, 2015. In determining a petitioner's ability to pay the proffered wage we may consider the totality of its circumstances. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). At our discretion we may consider evidence relevant to the petitioner's financial situation that falls outside of its net income and net current assets. Based on the entire record in this case, which includes federal tax returns, audited financial statements, evidence of wages paid to the Beneficiary, and a letter from a financial officer of the Petitioner, which employs over 100 people, we find that the Petitioner has established by a preponderance of the evidence that it has had the ability to pay the full proffered wage from the priority date of August 29, 2015, onward.

ORDER: The appeal is sustained.

Cite as *Matter of N-C-S-*, ID# 1671843 (AAO Sept. 20, 2018)